

**CITY COUNCIL OF THE CITY OF SAN DIEGO
CLOSED SESSION DOCKET
FOR
TUESDAY, APRIL 13, 2004
AT 9:00 A.M.**

NOTE: In accordance with the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings, adopted on March 29, 2004, a portion of the regular open meeting agenda of the City Council has been reserved for City Attorney comment, public comment, and City Council discussion of the content of this Closed Session Docket. Please see the Open Session Agenda to determine when such matters may be heard.

I. Conference with Legal Counsel - existing litigation, pursuant to California Government Code section 54956.9(a):

- a. *Archer Western Pacific v. City of San Diego*
San Diego Superior Court No.

DCA Assigned: Armando Mendez

This matter involves a dispute between the City of San Diego [City] and Archer Western, LLP [AW] regarding the design and construction of the Rancho Bernardo Pipeline No. 2 and Black Mountain Ranch Reclaimed Water Pipeline Project. Pursuant to a design-build contract, AW prepared plans for a new water supply line which called for the line to cross under a pre-existing water supply line. AW's plans would have resulted in the exposure of that pre-existing line and the temporary removal of its foundational support. In order to ensure protection of the pre-existing line, City staff recommended a more expensive tunneling approach.

AW proceeded with the City recommended approach and pursuant to contract requirements requested additional compensation. The City declined the request. After all contractual dispute resolution procedures were exhausted without a settlement, AW filed suit against the City claiming \$266,578 in damages for the cost of the extra work. In closed session the City Attorney will discuss the status of the litigation and request direction on a potential settlement of the matter.

- b. *Border Business Park v. City of San Diego*
Appellate Case No. D039225; SDSC Case No. GIC 692794
Otay Acquisitions v. City of San Diego
SDSC Case No. GIC 753247
National Enterprises, Inc. v. City of San Diego
SDSC Case Nos. GIC 791407; GIC 805465

ACA Assigned: Les Girard

These matters involve a variety of disputes between certain companies owned or controlled by Roque de la Fuente and the City of San Diego [City] regarding the Border Business Park in Otay Mesa. The *Border Business Park* case resulted in a jury verdict against the City which is now on appeal. The *National Enterprises* and *Otay Acquisitions* cases are currently awaiting trial in the Superior Court. In closed session, the City Attorney will report on the status of on-going settlement negotiations and request further direction regarding those negotiations.

- c. *State of California v. City of San Diego*
U.S. District Court No. 03-CV-1381-B

DCA Assigned: Ted Bromfield

The Regional Water Quality Control Board [Regional Board] initiated this case on July 3, 2003, in conjunction with a companion action filed by the United States, seeking remedies and penalties for sanitary sewer overflows from December 1996 to the present. The City has consolidated these two cases with a private action filed by BayKeeper/Surfrider Foundation and has been pursuing a consent decree that would resolve all actions. In the Regional Board action, the complaint focuses on sewer overflows that amount to approximately 2.7 million gallons. This amount was increased on February 22, 2004, when the City experienced a 4.6 million gallon spill into San Diego Bay caused by rocks clogging a sewer line near the Naval Medical Center.

The City Attorney will discuss the strengths and weaknesses of the City's position and seek authorization to make a settlement offer to resolve all spills through date of settlement.

- d. *Arena Group 2000 v. City of San Diego*
San Diego Superior Court No. GIC 825645

DCA Assigned: David King

This matter is an action for breach of contract filed by Arena Group 2000 [AG] against the City of San Diego [City] regarding the lease of the Sports Arena by AG from the City. AG filed a complaint against the City based upon the City's failure to approve auto sales on the Sports Arena site, activity AG contends is permitted under the lease. In closed session, the City Attorney will report on the status of the litigation, discuss strategy regarding its progress, and seek any appropriate direction from the City Council.

- II. Conference with Legal Counsel - anticipated litigation - significant exposure to litigation, pursuant to California Government Code section 54956.9(b):

- a. *Tusch Derbonne v. City of San Diego*

HDCA Assigned: Prescilla Dugard

This matter involves a dispute between the City of San Diego [City] and Tusch Derbonne [TD] regarding rent increases in a lease between the City and TD for property located at 3940 Hancock Street. The lease provides for periodic upward adjustments in the rent paid to the City based upon different factors. The City and TD disagree as to the interpretation of language regarding the timing of payments called for in the periodic increases. In closed session, the City Attorney will ask for direction concerning a proposed settlement of the dispute.

- III. Conference with Labor Negotiator, pursuant to Government Code section 54957.6:

Agency negotiators: Lamont Ewell, Cathy Lexin, Mike McGhee

Employee organizations: Municipal Employees Association, Local
127 AFSCME, AFL-CIO, Local 145
International Association of Firefighters
AFL-CIO, San Diego Police Officers
Association

In closed session, the City's negotiating team will review with the City Council the City's position with respect to: 1) health benefit plans, and 2) retirement survivor benefits and family leave benefits for domestic partners, and request instructions from the City Council as to those matters.